



# California Fair Political Practices Commission

May 27, 1988

James P. Botz  
County Counsel  
County of Sonoma  
County Administration Center  
575 Administration Dr., Room 116A  
Santa Rosa, CA 95401-2421

Re: Your Request for Advice  
Our File No. I-88-147

Dear Mr. Botz:

You have requested follow up advice concerning the duties and responsibilities of Sonoma County Supervisor Janet Nicholas under the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1/</sup> Because your request is more of a general inquiry than a request for advice as to a specific action pending before the board of supervisors, we treat your request as one for informal assistance.<sup>2/</sup>

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2/</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

In our previous advice letter (Botz Advice Letter, No. I-87-297), we advised that Supervisor Nicholas must disqualify herself from participating in actions of the board of supervisors when (1) the bank for which her husband serves as director and holds a 3.5-percent interest appears before the board of supervisors or is a named party in a proceeding before the board of supervisors, or (2) the bank has no direct involvement in the proceeding, but the decision of the board of supervisors will foreseeably and materially affect the bank.

In an effort to clarify the analysis provided to you at that time, we referred to a previous Commission advice letter which dealt with similar concerns. You are now asking for clarification of the analysis provided in that advice letter. The Burnham Advice Letter, No. A-82-039, involved Planning Commissioner Paul Balalis, who held a 6-percent ownership interest in a local bank. Mr. Balalis also served as chairman of the board of directors of the bank and received more than \$250 a year from the bank for his services.

The bank had made loans of approximately \$240,000 to a private club located in Mr. Balalis' jurisdiction. This private club had applied for and received use permits from the planning commission. The question presented to us was whether Mr. Balalis, because of his interest in the bank, was prohibited from participating in decisions of the planning commission regarding use permits applied for by the private club. We advised that Mr. Balalis was not required to disqualify himself unless it was foreseeable that the decisions would have a material financial effect on the bank.

#### No Foreseeable Material Financial Effect Found

You ask whether our determination that there was no foreseeable material financial effect was based on the fact that Mr. Balalis' 6-percent pro rata share of the interest earned on the loans did not meet the threshold for materiality as set forth in regulation. The answer is no. Since Mr. Balalis' interest in the bank was less than 10 percent, there was no need to apply any pro rata calculations when deciding whether a material financial effect was foreseeable. (Section 82030.)

The basis for finding no disqualifying interest was that there were no facts which would link the decision of the public official to any foreseeable financial effect on the bank. In the advice letter we explained:

The fact that a decision will affect one of the bank's borrowers or depositors is not, in itself, sufficient to create a conflict of interest. Because Mr. Balalis has less than a 10% interest in the bank, sources of income to the bank are not sources of income to him (Section 82030), and investment or real property interests of the bank are not his investments or interests (Sections 82033, 82034).

...Mr. Balalis need not disqualify himself from decisions involving the bank's borrowers or depositors, unless there is some unusual situation in which the decision will foreseeably affect the bank itself.

Burnham, supra, at page 2.

Footnote 2 in Burnham, offers some insight into what would constitute "an unusual situation":

There are some decisions regarding a borrower which might affect the bank financially. For example, a decision on a permit, when issuance of the permit would determine whether a borrower would default on a loan, or when issuance of the permit was a precondition to a loan, would affect the bank financially.

In other words, whether the customer of the bank has major outstanding loans or is just a small depositor is not controlling. You must look to the decision before the board of supervisors and determine whether the decision will have a foreseeable material financial effect on the bank. If such an effect on the bank is foreseeable, then Supervisor Nicholas must disqualify herself from participation.

#### The Duty to Know the Identities of Customers of the Bank

Section 87100 prohibits a public official from participating in a governmental decision in which she "knows or has reason to know" she has a financial interest. Thus, as was noted in Burnham, supra, Mr. Balalis had no obligation to inform himself of the identity of the bank's customers.<sup>3/</sup>

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<sup>3/</sup> The same would not necessarily apply with respect to certain customers if an official has a 10 percent or greater ownership interest in the bank so that sources of income to the bank are considered to be pro rata sources of income to the official.

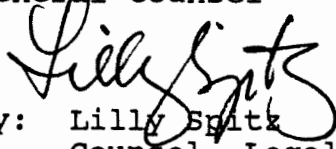
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This applies, as well, to Supervisor Nicholas' situation. She is under no obligation to inform herself of the identity of each of the bank's customers. However, if she is aware, or has reason to be aware of the identity of a bank customer who appears before the board of supervisors, and knows or has reason to know that the decision before her could have a material financial effect on the bank, she is prohibited from participating in that decision.

I hope this will further clarify Supervisor Nicholas' responsibilities under the Act. If you have any questions, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

  
By: Lilly Spitz  
Counsel, Legal Division

DMG:LS:ld

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April 12, 1988

Ms. Lilly Spitz, Counsel  
Legal Division  
Fair Political Practices Commission  
428 J Street, Suite 800  
Sacramento, CA 95814

Re: Informal Advice Per Your File No. I-87-297

Dear Ms. Spitz:

Let me thank you once again for your timely response to my request for advice with respect to Sonoma County Supervisor Janet Nichplas' potential conflict of interest because of her husband's relationship with the Sonoma Valley Bank. A copy of that letter was given to Supervisor Nicholas, and there have been ongoing discussions concerning its implementation with both officials of the Sonoma Valley Bank and certain County department heads.

During the course of these discussions, some questions concerning your opinion have arisen, and I would appreciate any clarification that you might give to them. Both questions concern the 1982 advice letter to the Newport Beach City Attorney (your number A-82-039) concerning a Mr. Balalis, a member of the Newport Beach planning commission.

First, as you may recall, the opinion centered on a \$240,000 loan by Mr. Balalis' bank to a private club located in the city of Newport Beach. At about the time Mr. Balalis was serving as chairman of the bank, the annual interest on the \$240,000 loan would have been about \$37,200. The opinion reaches the conclusion that there was no impropriety found with Mr. Balalis voting on the matters in question. Was this because Mr. Balalis' share of the gross income would have been less than \$10,000 (i.e., \$37,200 interest multiplied by his 6 percent imputed share of that interest equalling \$2,232)?

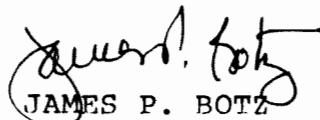
Second, there is some language in the Balalis opinion that appears to establish a conflict only in a case where the public official has actual knowledge. That is, the last sentence of the second full paragraph on page 2 of the advice letter states that Mr. Balalis was under no duty to inform himself as to the identity of the bank's customers. Could you please tell

Ms. Lilly Spitz, Counsel  
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us if the same sort of obligation exists for Supervisor Nicholas; i.e., would she be obligated to disqualify herself only as to public matters involving Sonoma Valley Bank customers about which her husband has informed or through which she has information from other sources?

Once again, your timely and professional advice is always appreciated.

Very truly yours,

  
JAMES P. BOTZ  
County Counsel

JPB:dlb  
cc: Supervisor Nicholas